

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN GIBSON,

Plaintiff,

v.

KING COUNTY, a municipal corporation of
the State of Washington, STEPHANIE
WARDEN, Director of King County
Department of Development and
Environmental Services, in her official and
individual capacities, JIM RANKIN, King
County Fire Marshal, in his official and
individual capacities, LESLIE EATON, and
LAWRENCE CANARY, in his official and
individual capacities,

Defendants.

No. 04-1940(P) RJB

PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this court by virtue of 42 U.S.C. § 1988, 28 U.S.C. § 1331,
28 U.S.C. § 1367, and RCW Chapt. 49.60.030(2).

CLAIMS AND DEFENSES

The plaintiff will pursue at trial the following claims:

1. Race discrimination in violation of 42 U.S.C. § 1981 and RCW Chapt. 49.60;
2. A racially hostile work environment claim in violation of 42 U.S.C. § 1981 and RCW Chapt. 49.60;
3. A claim of aiding and abetting discrimination in violation of RCW Chapt. 49.60.220; and
4. Economic, compensatory and punitive damages pursuant to the above statutes.

The defendants will pursue the following affirmative defenses:

1. Plaintiff has failed to mitigate his damages, if any.
2. Plaintiff's claims are wholly or partially barred by the applicable statute of limitations.
3. Defendants had legitimate, non-discriminatory reasons for any actions concerning plaintiff.
4. Defendant King County is immune from punitive damages.
5. Plaintiff's claims are wholly or partially barred as to liability and/or damages based on the after-acquired evidence doctrine.

ADMITTED FACTS

The following facts are admitted by the parties:

1. Plaintiff John Gibson is African-American.
2. Plaintiff and Defendant Lawrence Canary applied for the supervisory position of assistant fire marshal in July 2003.
3. There were 12 applicants for Assistant Fire Marshal, ten of whom were external candidates and two (Canary and plaintiff) who were internal.

1 4. Two evaluators screened the applications and identified six candidates who
2 met the minimal qualifications for the position.

3 5. A Technical Interview Panel with three evaluators and a Management
4 Interview Panel with two evaluators interviewed the six candidates.

5 6. Plaintiff and Canary were the two finalists for the position.

6 7. Canary was selected for the position.

7 8. Canary is Caucasian.

8 9. The assistant fire marshal reports directly to the Fire Marshal.

9 10. The Fire Investigative Unit serves unincorporated King County and cities
10 that contract with King County for such services.

11 11. The Assistant Fire Marshal and the fire investigators are commissioned as
12 law enforcement officers and vested with certain police powers pursuant to RCW 48.48.060.

13 *The plaintiff contends as follows:*

14 1. Plaintiff met all the qualifications for the assistant fire marshal position
15 vacancy posted in the summer of 2003.

16 2. Plaintiff was denied an equal opportunity to compete for the position of
17 assistant fire marshal in the summer of 2003 because of his race.

18 3. Plaintiff was subjected to a racially hostile environment which permeated the
19 defendants' fire marshal's office.

20 4. Defendants, and each of them, impeded and obstructed Mary Dawson from
21 conducting a fair, impartial and independent investigation of plaintiff's complaint of race
22 discrimination and a racially hostile environment.

23 5. Plaintiff has suffered and continues to suffer economic damages because of
24 the loss of the promotional opportunity to assistant fire marshal.

1 6. Plaintiff has suffered and continues to suffer severe emotional distress,
2 anxiety, mental anguish, humiliation and embarrassment because of the unlawful conduct of
3 defendants.

4 7. Defendants Warden, Rankin, Eaton and Canary acted and conducted
5 themselves with malice toward or with reckless indifference to the federally protected rights
6 of plaintiff.

7 *The defendants contend as follows:*

8 1. Canary was the more strongly qualified candidate for the assistant fire
9 marshal position, and Warden selected Canary for legitimate, nondiscriminatory reasons.

10 2. Plaintiff received an equal opportunity to compete for the assistant fire
11 marshal position, Canary had stronger credentials for the position and was thus selected, and
12 there was no unlawful discrimination based on race.

13 3. Plaintiff cannot properly assert his “equal opportunity to compete” claim as it
14 is not what he pled in his complaint.

15 4. Even if Plaintiff could assert his “equal opportunity to compete” claim,
16 Defendants did not unlawfully discriminate against plaintiff, Canary was more strongly
17 qualified for the position, and, in any event, it would be futile to redo the hiring process
18 because, for legitimate, non-discriminatory reasons, Plaintiff would not be selected for the
19 assistant fire marshal position.

20 5. Plaintiff was not subject to a racially hostile work environment and no such
21 environment permeated the fire marshal’s office.

22 6. Defendants did not impede or obstruct Mary Dawson from conducting a fair,
23 impartial and independent investigation of plaintiff’s complaints.

24 7. Because Canary was the more qualified candidate for the assistant fire
25 marshal position, plaintiff could not have suffered economic damages by not being selected
26
27

1 for the position, and, moreover, the overall compensation for the position is not greater than
2 what plaintiff received as a fire investigator.

3 8. Plaintiff voluntarily chose to leave his fire investigator job with King County
4 and therefore cannot properly seek economic or emotional distress related damages, if any,
5 arising from that decision.

6 9. Defendants have not acted unlawfully toward plaintiff and therefore plaintiff
7 could not have suffered severe emotional distress, anxiety, mental anguish, humiliation and
8 embarrassment based on any such alleged unlawful conduct.

9 10. Plaintiff has emotional distress attributable to other factors than what he
10 alleges concerning his employment with King County.

11 11. No defendants acted with malice toward or with reckless indifference to
12 plaintiff's federally protected rights.

13 **ISSUES OF LAW**

14 *Plaintiff presents the following Issues of Law:*

15 1. Did defendants and each of them discriminate against plaintiff in violation of
16 42 U.S.C. § 1981 by depriving him of an equal opportunity to compete for the position of
17 assistant fire marshal during the summer of 2003?

18 2. Did defendants and each of them discriminate against plaintiff in violation of
19 RCW 49.60.030(1)(a) and RCW 49.60.180(3) by denying him an equal opportunity to
20 compete for the position of assistant fire marshal during the summer of 2003?

21 3. Did defendants and each of them discriminate against plaintiff in violation of
22 42 U.S.C. § 1981 by creating, perpetuating, encouraging, participating in, and/or failing to
23 eradicate a racially hostile work environment?
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1 4. Did defendants and each of them discriminate against plaintiff in violation of
2 RCW 49.60.030(1)(a) and RCW 49.60.180(3) by creating, perpetuating, encouraging,
3 participating in, and/or failing to eradicate a racially hostile work environment?
4

5 5. Did defendants and each of them violate RCW 49.60.220 by aiding, abetting,
6 and/or encouraging the denial to plaintiff of an equal opportunity to compete for the position
7 of assistant fire marshal during the summer of 2003 and/or creating, perpetuating,
8 encouraging, participating in, and/or failing to eradicate a racially hostile work
9 environment?
10

11 6. Did defendants' violations of 42 U.S.C. § 1981, RCW 49.60.030(1)(a),
12 RCW 49.60.180(3), and RCW 49.60.220 cause plaintiff monetary damage and, if so, what
13 are the amounts?
14

15 7. Should the court permanently enjoin defendants and each of them by
16 ordering the County to immediately initiate a new hiring process for the position of assistant
17 fire marshal in such a way as to assure an equal opportunity for all applicants regardless of
18 race?
19

20 8. Have defendants and each of them acted with malice toward or reckless
21 indifference to the federally protected rights of plaintiff so that he is entitled to recover
22 punitive damages?
23

24 9. Is evidence surrounding Mary Dawson's investigation of plaintiff's
25 complaint, including her interviews with witnesses, her conversations with deputy
26 prosecutors, and her statements to plaintiff and others admissible in this matter?
27

 10. Is evidence of the investigation initiated by defendant Warden in June 2005,
including her communications to affected employees, the County policies on which the
investigation was commenced, and the status of the investigation admissible?

 11. Is evidence of the fact that plaintiff was transferred from fire investigator to
fire inspector in approximately 1986, and then transferred back to the fire investigation unit

1 in 1994 after successfully completed required courses at the fire academy brought about as
2 the result of a settlement of a race discrimination claim he had made against the County
3 admissible?

4 12. Is the testimony of Dave Pargas regarding racist statements and attitudes of
5 Leslie Eaton admissible?

6 13. Is Lynne Kalina's July 27, 2004 letter to plaintiff's counsel admissible?

7 14. Is evidence of remarks such as "buckwheat" and references to plaintiff as
8 being "different" and illiterate admissible?

9 15. Is evidence of co-workers in the fire marshal's office about a racially hostile
10 work environment admissible?

11 16. Is evidence of the individual defendants' net worth admissible?

12 17. Is evidence of plaintiff's current work situation at Kitsap County admissible?

13 *Defendants present the following Issues of Law:*

14 1. Was plaintiff denied a promotion to assistant fire marshal in 2003 in violation
15 of 42 U.S.C. § 1981?

16 2. Was plaintiff denied a promotion to assistant fire marshal in 2003 in violation
17 of RCW 49.60?

18 3. Was plaintiff subject to a racially hostile work environment in violation of 42
19 U.S.C. § 1981?

20 4. Was plaintiff subject to a racially hostile work environment in violation of
21 RCW 49.60?

22 5. If plaintiff was denied promotion to assistant fire marshal in 2003 or subject
23 to a racially hostile work environment in violation of RCW 49.60, did any individual
24 defendants violate RCW 49.60.220 in connection with that violation?

25 6. If defendants violated 42 U.S.C. § 1981 and/or RCW 49.60, did plaintiff
26 suffer monetary damage and, if so, in what amount?
27

1 7. If plaintiff was unlawfully denied promotion to assistant fire marshal in 2003
2 in violation of law, should the court order that plaintiff be awarded that position despite the
3 fact that Canary has now been in the position for over two years, plaintiff has not worked for
4 King County for over a year?

5 8. If plaintiff was unlawfully denied based on race an equal opportunity to
6 compete for the assistant fire marshal position, should he be allowed to claim that the hiring
7 process should be done over, when he did not plead this in his complaint and, for legitimate,
8 non-discriminatory reasons it would be futile?

9 9. If plaintiff was denied promotion to assistant fire marshal in 2003 or subject
10 to a racially hostile work environment in violation of 42 U.S.C. § 1981, did any individual
11 defendant(s) act with malice toward or reckless indifference to plaintiff's rights such that he
12 is entitled to recover punitive damages?

13 10. Should plaintiff's and defendants' respective motions in limine be granted in
14 whole or in part?

15 **EXPERT WITNESSES**

16 Neither side will present any expert witnesses.

17 **OTHER WITNESSES**

18 The names and addresses of witnesses, other than experts, to be used by each party at
19 the time of trial and the general nature of the testimony of each are:

20 *(a) On behalf of plaintiff:*

- 21 1. John Gibson
22 10204 47th Avenue SW, Unit B-18
23 Seattle, WA 98146

24 Gibson will testify about his personal and employment history, the discriminatory
25 nature of the hiring process for assistant fire manager in the summer of 2003, the racially
26 hostile environment to which he was subjected while employed at King County, his
27 economic damages, and his general damages.

1 2. Mary Dawson
2 King County Administration Building
3 500 Fourth Avenue
4 M.S. ADM-HR-0450
5 Seattle, WA 98104

6 Ms. Dawson will testify about the investigation she conducted concerning plaintiff's
7 complaint, her report, and defendants' efforts to modify that report.

8 3. Terry Hammond
9 900 Oakesdale Ave SW
10 M.S. OAK-DE-0100
11 Renton, WA 98055-1219

12 Mr. Hammond will testify regarding the racially hostile work environment at the
13 King County Fire Marshal's office, his efforts to notify management about that
14 environment, his participation in the investigation of the complaint filed by John Gibson,
15 and the investigation started in June 2004 concerning his complaints about the hostile work
16 environment described to Mary Dawson during her investigation of John Gibson's
17 complaint.

18 4. Jason Herring
19 900 Oakesdale Ave SW
20 M.S. OAK-DE-0100
21 Renton, WA 98055-1219

22 Mr. Herring will testify regarding the racially hostile work environment at the King
23 County Fire Marshal's office, his efforts to notify management about that environment, his
24 participation in the investigation of the complaint filed by John Gibson, and the
25 investigation started in June 2004 concerning his complaints about the hostile work
26 environment described to Mary Dawson during her investigation of John Gibson's
27 complaint.

5. Sherrie Chatman
900 Oakesdale Ave SW
M.S. OAK-DE-0100
Renton, WA 98055-1219

Sherrie Chatman may testify regarding the racially hostile work environment at the
King County Fire Marshal's office, her efforts to notify management about that
environment, her participation in the investigation of the complaint filed by John Gibson,
the investigation started in June 2004 concerning her complaints about the hostile work
environment described to Mary Dawson during her investigation of John Gibson's
complaint, and the racially hostile statements made in her presence about plaintiff by third
parties.

1
2 6. Dianne Byrd
3 900 Oakesdale Ave SW
4 M.S. OAK-DE-0100
5 Renton, WA 98055-1219

6 Dianne Byrd may testify regarding the racially hostile work environment at the King
7 County Fire Marshal's office, her efforts to notify management about that environment, her
8 participation in the investigation of the complaint filed by John Gibson, and the
9 investigation started in June 2004 concerning her complaints about the hostile work
10 environment described to Mary Dawson during her investigation of John Gibson's
11 complaint.

12 7. Toya Williams
13 900 Oakesdale Ave SW
14 M.S. OAK-DE-0100
15 Renton, WA 98055-1219

16 Toya Williams may testify regarding the racially hostile work environment at the
17 King County Fire Marshal's office, her efforts to notify management about that
18 environment, her participation in the investigation of the complaint filed by John Gibson,
19 and the investigation started in June 2004 concerning her complaints about the hostile work
20 environment described to Mary Dawson during her investigation of John Gibson's
21 complaint.

22 8. Mike Dykeman
23 900 Oakesdale Ave SW
24 M.S. OAK-DE-0100
25 Renton, WA 98055-1219

26 Mr. Dykeman may testify about his supervision of John Gibson, the Assistant Fire
27 Marshal hiring process, his role in the administration of the Department of Development and
Environmental Services, his communications with DDES employees relevant to Gibson's
complaints, and his participation in the investigation of the internal complaint filed by
Gibson.

9. Michael Frawley
King County Administration Building
500 Fourth Avenue
M.S. ADM-HR-0450
Seattle, WA 98104

Mr. Frawley will testify about hiring and promotion processes at DDES, his
communications with DDES employees concerning Gibson, allegations of racism at DDES,
and his participation in the investigation of the internal complaint filed by Gibson.

1
2 10. Jason King
3 4128 93rd Avenue S.E.
4 Mercer Island, WA 98040

5 Mr. King will testify about his interactions with Gibson and with DDES employees
6 concerning the hiring process for Assistant Fire Marshal, allegations of racism at DDES, and
7 the investigation of Gibson's internal complaint.

8 11. Kathy Graves
9 900 Oakesdale Ave SW
10 M.S. OAK-DE-0100
11 Renton, WA 98055-1219

12 Ms. Graves will testify about her interactions with Gibson and with DDES
13 employees concerning the hiring process for Assistant Fire Marshal, the demographic
14 environment and allegations of racism at DDES, and the investigation of Gibson's internal
15 complaint.

16 12. Wes Moore
17 King County Administration Building
18 500 Fourth Avenue
19 M.S. ADM-HR-0450
20 Seattle, WA 98104

21 Mr. Moore will testify about the hiring and promotion processes and opportunities at
22 DDES and his participation in the development of hiring and promotion processes.

23 13. Dave Pargas
24 23775 S.E. 264th St.
25 Maple Valley, WA 98038

26 Mr. Pargas will testify about his experience supervising and working with John
27 Gibson, his experiences working with defendant Les Eaton, and his participation in the
investigation of the internal complaint filed by John Gibson.

14. Stephanie Warden
900 Oakesdale Avenue SW
MS OAK-DE-0100
Renton, WA 98055-1219

Ms. Warden will testify about her role in the hiring process for assistant fire marshal
in the summer of 2003, her responsibilities for assuring a hostility free work environment in
her department, including the fire marshal's office, and her understanding of the allegations

1 of disparate treatment and a racially hostile work environment that were raised in the winter
2 and spring of 2004 and the steps she took, if any, to abate those concerns.

3 15. Jim Rankin
4 900 Oakesdale Avenue SW
5 MS OAK-DE-0100
6 Renton, WA 98055-1219

7 Mr. Rankin will testify about his role in the hiring process for assistant fire marshal
8 in the summer of 2003, his employment with King County, counseling and training he
9 received for the King County fire marshal, and his interactions with plaintiff while each was
10 employment in the King County Fire Marshal's office.

11 16. Lawrence Canary
12 900 Oakesdale Avenue SW
13 MS OAK-DE-0100
14 Renton, WA 98055-1219

15 Mr. Canary will testify about his experiences during the hiring process for assistant
16 fire marshal in the summer of 2003, his interactions with plaintiff during the time both were
17 employed in the King County Fire Marshal's office, and statements he made during the
18 investigation of plaintiff's internal complaint.

19 17. Leslie Eaton
20 15335 70th Avenue N.E.
21 Kenmore, WA 98028

22 Mr. Eaton will testify about statements he made to and about the plaintiff and his
23 statements made during the investigation of plaintiff's internal complaint.

24 18. Lynne Kalina
25 500 4th Avenue, Suite 900
26 Seattle, WA 98104

27 Ms. Kalina will testify regarding her role in editing and revising Mary Dawson's
report of her investigation of the discrimination hostile environment claim of plaintiff and
her communications with counsel.

19. Kevin Alberg
69 Ira Light Street
Steilacoom, WA 93888

Mr. Alberg will testify regarding his application process for deputy fire marshal in the Fire
Investigation Unit and his communications regarding his application with representatives of
defendant King County.

1 (b) *On behalf of defendants:*

- 2 1. Kevin Alberg
3 69 Ira Light Street
4 Steilacoom, WA 98388

5 Mr. Alberg may testify regarding his employment with the fire investigative unit.

- 6 2. Bob Baker
7 City of Tukwila
8 6200 Southcenter Blvd
9 Tukwila, WA 98188

10 Mr. Baker may testify regarding plaintiff's business licensing issues with City of
11 Tukwila.

- 12 3. Danielle Billups
13 Address will be provided

14 Ms. Billups may testify regarding her experience working with the fire investigative
15 unit as it relates to plaintiff's claims.

- 16 4. James Broman
17 Lacey Fire District—Fire Chief
18 1231 Franz St SE
19 Lacey, WA 98503-2412

20 Mr. Broman will testify regarding his work as an evaluator for the assistant fire
21 marshal position.

- 22 5. Lawrence Canary
23 900 Oakesdale Avenue SW
24 MS OAK-DE-0100
25 Renton, WA 98055-1219

26 Mr. Canary will testify regarding issues concerning plaintiff's allegations in the case.

- 27 6. Patti Cole-Tindall
 900 Oakesdale Avenue SW
 MS OAK-DE-0100
 Renton, WA 98055-1219

 Ms. Cole-Tindal may testify regarding issues concerning plaintiff's allegations in the
 case.

1 7. Derrick Crawley
2 Chief Deputy Fire Marshal
3 Kitsap County Dept of Community Development
4 614 Division Street, MS 36
5 Port Orchard, WA 98366-4682

6 Mr. Crawley may testify regarding plaintiff's employment with Kitsap County.

7 8. Tom Devine
8 900 Oakesdale Ave SW
9 M.S. OAK-DE-0100
10 Renton, WA 98055-1219

11 Mr. Devine may testify regarding issues concerning plaintiff's allegations in the
12 case.

13 9. Mike Dykeman
14 900 Oakesdale Ave SW
15 M.S. OAK-DE-0100
16 Renton, WA 98055-1219

17 Mr. Dykeman will testify regarding issues concerning plaintiff's allegations in the
18 case.

19 10. Leslie Eaton
20 15335 70th Avenue N.E.
21 Kenmore, WA 98028

22 Mr. Eaton will testify regarding issues concerning plaintiff's allegations in the case.

23 11. Michael Frawley
24 King County Administration Building
25 500 Fourth Avenue
26 M.S. ADM-HR-0450
27 Seattle, WA 98104

Mr. Frawley may testify regarding issues concerning plaintiff's allegations in the
case.

12. Kathy Graves
900 Oakesdale Ave SW
M.S. OAK-DE-0100
Renton, WA 98055-1219

Ms. Graves will testify regarding issues concerning plaintiff's allegations in the case.

1 13. Bill Harm
2 King County Fire Protection District #2
3 Burien-Normandy Park Fire Department
4 15100 8th Ave SW
5 Burien, WA 98166

6 Mr. Harm will testify regarding his work as an evaluator for the assistant fire
7 marshal position and his work in the fire investigative unit as it relates to plaintiff's claims.

8 14. Wallace Holstad
9 13209 NE 175th St
10 Woodinville, WA 98072

11 Mr. Holstad will testify regarding his work as an evaluator for the assistant fire
12 marshal position.

13 15. Lynne Kalina
14 500 4th Avenue, Suite 900
15 Seattle, WA 98104

16 Ms. Kalina may testify regarding issues concerning plaintiff's allegations in the case.

17 16. Jason King
18 4128 93rd Avenue S.E.
19 Mercer Island, WA 98040

20 Mr. King may testify regarding issues concerning plaintiff's allegations in the case.

21 17. Tim Lemon
22 Fire Chief
23 Maple Valley Fire & Life Safety
24 23775 SE 264th Street
25 Maple Valley, WA 98038

26 Mr. Lemon will testify regarding his work as an evaluator for the assistant fire
27 marshal position.

18. Loida Llarenas
900 Oakesdale Ave SW
M.S. OAK-DE-0100
Renton, WA 98055-1219

Ms. Llarenas may testify regarding issues concerning plaintiff's allegations in the case.

1 19. Wes Moore
2 King County Administration Building
3 500 Fourth Avenue
4 M.S. ADM-HR-0450
5 Seattle, WA 98104

6 Mr. Moore may testify regarding issues concerning plaintiff's allegations in the case.

7 20. Craig Muller
8 900 Oakesdale Ave SW
9 M.S. OAK-DE-0100
10 Renton, WA 98055-1219

11 Mr. Muller will testify regarding issues concerning plaintiff's allegations in the case.

12 21. Steve Neff
13 900 Oakesdale Ave SW
14 M.S. OAK-DE-0100
15 Renton, WA 98055-1219

16 Mr. Neff will testify regarding issues concerning plaintiff's allegations in the case.

17 22. Cathy Ortiz-Olguin
18 900 Oakesdale Ave SW
19 M.S. OAK-DE-0100
20 Renton, WA 98055-1219

21 Ms. Ortiz-Olguin may testify regarding the promotion process for assistant fire
22 marshal and any related issues.

23 23. Leslie O'Toole
24 900 Oakesdale Ave SW
25 M.S. OAK-DE-0100
26 Renton, WA 98055-1219

27 Ms. O'Toole may testify regarding issues concerning plaintiff's allegations in the case.

28 24. Jim Rankin
29 900 Oakesdale Avenue SW
30 MS OAK-DE-0100
31 Renton, WA 98055-1219

32 Mr. Rankin will testify regarding issues concerning plaintiff's allegations in the case.

33 25. Chris Ricketts
34 900 Oakesdale Avenue SW
35 MS OAK-DE-0100
36 Renton, WA 98055-1219

1 Mr. Ricketts may testify regarding issues concerning plaintiff's allegations in the
2 case.

3 26. Susan Slonecker
4 King County Prosecuting Attorney's Office
5 500 Fourth Avenue, Suite 900
6 Seattle, WA 98104

7 Ms. Slonecker may testify regarding issues concerning plaintiff's allegations in the
8 case.

9 27. Dave Smith
10 1101 D St NE
11 Auburn, WA 98002

12 Mr. Smith will testify regarding his work as an evaluator for the assistant fire
13 marshal position.

14 28. Bill Steele
15 Deputy Fire Marshal
16 Pierce County Fire Prevention Bureau
17 2401 S 35th St
18 Tacoma, WA 98409-7494

19 Mr. Steele may testify regarding the Washington State Patrol Certified Fire
20 Investigator testing and certification process.

21 29. Stephanie Warden
22 900 Oakesdale Avenue SW
23 MS OAK-DE-0100
24 Renton, WA 98055-1219

25 Ms. Warden will testify regarding issues concerning plaintiff's allegations in the
26 case.

27 30. Anita Whitfield
King County Administration Building
500 4th Avenue
M.S. ADM-HR-0450
Seattle, WA 98104

Ms. Whitfield may testify regarding issues concerning plaintiff's allegations in the
case.

EXHIBITS**(a) Admissibility and authenticity stipulated:***Plaintiff's Exhibits:*

1. September 2, 2003 email from Jason King to Cathy Ortiz (KC 02817)
2. Job announcement for Assistant Fire Marshal (open 7/7/03 - close 7/21/03) (KC 02888 through KC 02889)
3. August 2003 Memorandum re: Recommendation for Assistant Fire Marshal-Investigations (KC 02823 through KC 02824)
4. 01/08/04 Payroll File Turnaround Document (KC 01042 through KC 01043)
5. 7/31/03 memo to Larry Canary from Jason King re: special duty assignment (KC 01093)
6. July 29, 2003 email from Les Eaton to Jim Rankin (J.Gibson-0096)
7. 8/7/03 email to Kathy Graves from Jim Rankin re: extension of special duty assignment (KC 01092)
8. 8/7/03 memo to Larry Canary from Jason King re: special duty assignment (KC 01091)
9. August 7, 2003 email from Les Eaton to Jim Rankin (J.Gibson-0097)
10. DDES Guide to the Hiring Process for Managers and Supervisors – October 2004 (deposition exhibit 33)
11. Chapter 3.12 - Personnel System (deposition exhibit 34)
12. King County Personnel Guidelines – October 1, 2000 (deposition exhibit 35)
13. King County Selection and Hiring Process Manual - June 18, 2001 (deposition exhibit 36)
14. King County Administrative Policies - Executive Orders, Policies & Procedures - Title: Nondiscrimination and Anti-Harassment Policy and Procedures - Effective Date: September 29, 2002

Defendants' Exhibits:

- A-1. E-mail dated May 24, 2004 from Gibson to Larry Canary regarding work backlog and a death investigation report.
- A-2. E-mail dated June 22, 2004 from Jim Rankin to Gibson regarding information Gibson needed to send to another fire district.
- A-3. E-mail dated June 24, 2004 from Gibson to Jim Rankin, responding to

Mr. Rankin's June 22 e-mail (KC 4020-21).

- A-4. E-mail dated June 25, 2004 from Jim Rankin to Gibson confirming receipt of his June 24 e-mail (KC 4037).
- A-5. E-mail dated June 26, 2004 from Gibson to Jim Rankin regarding his June 25 e-mail (KC 4128).
- A-6. Memo dated July 15, 2004 from Jim Rankin to Gibson summarizing their July 2, 2004 meeting to discuss issues raised in Gibson's June 24 e-mail (KC 4042-46).
- A-7. Memo dated July 21, 2004 from Gibson to Jim Rankin regarding clarification to Mr. Rankin's July 15 memo (KC 4040-41).
- A-8. Memo dated August 2003 from Jim Rankin recommending Larry Canary be appointed as the new Assistant Fire Marshal (KC 2823-24).
- A-9. Letter dated May 28, 2004 from Mr. Rosen to Stephanie Warden and Notice of Claim in which Gibson alleged race discrimination arising out of Ms. Warden's not selecting him for the Assistant Fire Marshal position (J.Gibson-1458-60).

(b) Authenticity stipulated, admissibility disputed:

Plaintiff's Exhibits:

- 15. June 9, 2004 report from investigator Mary Dawson re: Gibson complaint
- 16. May 13, 2004 report from investigator Mary Dawson re: Gibson complaint (KC 01746 through KC 01761)
- 17. 1/14/04 handwritten notes - Jim Rankin (KC 01721 through KC 01723)
- 18. 1/27/04 letter to Jon Howard Rosen from Lynne J. Kalina re: John Gibson (KC 01664 through KC 01665)
- 19. 1/14/04 handwritten notes - Larry Canary (KC 01712 through KC 01715)
- 20. 1/12/03 handwritten notes - Stephanie Warden (KC 01732 through KC 01734)
- 21. 4/22-23/04 email exchange between Stephanie Warden and John Gibson re: "I talked to" Mary Dawson (J.Gibson-0102)
- 22. Dawson interview notes and outlines (KC 01684 through KC 01765)
- 23. 1/9/03 handwritten notes (KC 01709)

24. Memorandum dated January 26, 2004 from Michael Frawley to Jason King re: Fire Investigation Unit Performance Management (KC 04050 through KC 04051)
25. Email exchange dated April 28-29, 2004 between Anita Whitfield, Mary Dawson and Susan Slonecker re: DDES Investigation - Status (KC 03830 through KC 03843)
26. Letter dated April 30, 2004 from Jon Howard Rosen to Susan Slonecker re: EEO Investigation
27. Letter dated May 17, 2004 from Lynne Kalina to Jon Howard Rosen re: EEO Investigation
28. Letter dated June 4, 2004 from Jon Howard Rosen to Lynne Kalina re: EEO investigation
29. Email dated May 6, 2004 from Mary Dawson to Lynne Kalina, Anita Whitfield and Susan Slonecker attaching draft of EEO report (KC 03844 through KC 03857)
30. Email dated May 13, 2004 from Mary Dawson to Lynne Kalina, Anita Whitfield and Susan Slonecker attaching draft of EEO report (KC 03872 through KC 03888)
31. Email dated June 3, 2004 from Mary Dawson to Lynne Kalina, Anita Whitfield and Susan Slonecker attaching draft of EEO report (KC 03907 through KC 03925)
32. Email dated June 9, 2004 from Mary Dawson to Lynne Kalina, Anita Whitfield and Susan Slonecker attaching draft of EEO report (KC 03926 through KC 03944)
33. Email dated June 10, 2004 from Mary Dawson to Lynne Kalina, Anita Whitfield and Susan Slonecker attaching draft of EEO report (KC 03945 through KC 03963)
34. Investigation Unit because of his race (with handwritten notes) (KC 02966 through KC 02976)
35. Kalina notes to self (KC 04490 through KC 04495)
36. April 27, 2004 memo from Mary Dawson to Stephanie Warden re: John Gibson's EEO Complaint (KC 04241 through KC 04253)
37. April 27, 2004 memo from Mary Dawson to Stephan Warden re: John Gibson's EEO Complaint (KC 04254 through KC 04266)
38. May 13, 2004 memo from Mary Dawson to Lynne Kalina re: John Gibson's EEO Complaint (KC 04267 through KC 04282)
39. May 26, 2004 memo from Mary Dawson to Lynne Kalina re: John Gibson's EEO Complaint (KC 04283 through KC 04300)

40. Redlined version of June 3, 2004 memo from Mary Dawson to Stephanie Warden re: John Gibson's EEO Complaint (KC 04301 through KC 04318)
41. Redlined version of June 9, 2004 memo from Mary Dawson to Lynne Kalina re: John Gibson's EEO Complaint (KC 04376 through KC 04394)
42. Email dated March 26, 2004 from Sherrie Chatman to Mary Dawson (KC03993)
43. Email dated May 6, 2004 from Mary Dawson to Lynne Kalina (KC 03994)
44. Email dated May 13, 2004 from Mary Dawson to Lynne Kalina and Anita Whitfield (KC 03995)
45. Email dated May 13, 2004 from Mary Dawson to Lynne Kalina (KC 03996)
46. Email dated May 25, 2004 from Mary Dawson to Anita Whitfield and Lynne Kalina (KC 03999)
47. Email dated June 3, 2004 from Mary Dawson to Anita Whitfield and Lynne Kalina (KC 04001)
48. Email dated June 4, 2004 from Susan Slonecker to Mary Dawson (KC 04002)
49. Email dated June 9, 2004 from Mary Dawson to Anita Whitfield and Lynne Kalina (KC 04006)
50. Email dated June 10, 2004 from Mary Dawson to Stephanie Warden (KC 04007)
51. Email dated June 10, 2004 from Mary Dawson to Lynne Kalina (KC 04008)
52. E-mail dated June 10, 2004 from Mary Dawson to Lynne Kalina (KC 04009)
53. Email dated June 10, 2004 from Mary Dawson to Anita Whitfield and Lynne Kalina (KC 04010)
54. Email dated June 10, 2004 from Mary Dawson to Lynne Kalina (KC 04011)
55. Email dated June 15, 2004 from Mary Dawson to Lynne Kalina (KC 04012)
56. April 27, 2004 Memo from Mary Dawson to Stephanie Warden re: John Gibson's EEO Complaint (with Mary Dawson's handwritten notes) (KC 03003 thru KC 03015)

57. May 26, 2004 Memo from Mary Dawson to Stephanie Warden re: John Gibson's EEO Complaint (with Mary Dawson's handwritten notes) (KC 03061 thru KC 03078)
58. Memo dated March 1, 2005 from Mike Dykeman to Mark Ossewaarde re: Letter of Counseling (KC 06237)
59. Gibson reference check (KC 04739 through KC 04740)
60. Gibson reference check (KC 04737 through KC 04738)
61. 12-24 handwritten notes re: Gibson (KC 01705 through KC 01708)
62. Email dated June 15, 2004 from Stephanie Warden to Jason Herring (KC 02965)

Defendants' Exhibits:

- A-10. Larry Canary's Application materials for the Assistant Fire Marshal position (KC 00046-67) [801, 802]
- A-11. E-mail correspondence dated October 19, 2004 from the Shoreline Fire District expressing concern about an investigation Gibson was handling (KC 04131) [402, 403, 801, 802]
- A-12. Memo dated April 20, 2004 from Leslie O'Toole to Larry Canary regarding Gibson (KC 04079-82) [402, 403, 701, 801, 802]
- A-13. Gibson's application materials for the Assistant Fire Marshal position (KC 00072, 9, 74, 1851-53, 1856-80). [106]
- A-14. Gibson's application for the Deputy Fire Marshal II position at Kitsap County. [106, 402, 403]
- A-15. Documents from the Washington State Patrol regarding Gibson's scores for the Washington State certification tests for Fire Investigator. [402, 403, 801, 802]
- A-16. Documents from the City of Tukwila regarding Gibson's business license. [402, 403, 801, 802]
- A-17. Gibson's application materials for the Deputy Fire Marshal II position at Kitsap County. [402, 403]
- A-18. All of Gibson's hand-written notes produced in discovery (J.Gibson-00001-95, 106-178, 220A-263A). [106, 403]
- A-19. Documents regarding evaluation process and scoring for assistant fire marshal position. [106, 402, 403, 801, 802]
- A-20. Letter dated January 16, 2003 and Certificate from Washington State Patrol to Leslie Eaton regarding his certification as a Fire Investigator (KC 844-45). [402, 403, 801, 802]
- A-21. E-mail dated August 22, 2003 from Kathy Graves to Jason King and

- 1 Jim Rankin regarding the status and results of the interview process
2 (KC 2714-15). [402, 403, 801, 802]
- 3 A-22. Memo dated August 22, 2003 from Kathy Graves to Jason King
4 regarding the testing and interview results (KC 2708-9) [402, 403,
5 801, 802]
- 6 A-23. Letter dated September 11, 2003 from Jon Rosen to Stephanie
7 Warden regarding Gibson (KC 1769-72). [402, 403, 801, 802]
- 8 A-24. Kitsap County document showing job offered to Gibson. [402, 403,
9 801, 802]
- 10 A-25. Letter dated October 15, 2004 from Kitsap County to Gibson offering
11 him the position of Deputy Fire Marshal II. [402, 403, 801, 802]
- 12 A-26. Gibson's 2000-2003 tax returns. [402, 403, 801, 802]
- 13 A-27. Document dated October 15, 2004 in which Gibson transferred
14 vacation to his wife (KC 5591). [402, 403, 801, 802]
- 15 A-28. E-mail dated October 21, 2004 and October 24, 2004 from Michael
16 Dykeman to John Gibson (KC 4028-30). [402, 403, 801, 802]
- 17 A-29. DDES Hiring Process 6/01/03—9/30/03 (KC 3372-3392). [106, 402,
18 403, 801, 802]
- 19 A-30. E-mail dated August 25, 2003 from Michael Frawley to Kathy Graves
20 (KC 3411). [402, 403, 801, 802]
- 21 A-31. E-mails dated July 21-30, 2003 between Stephanie Warden, Jim
22 Rankin and Kathy Graves (KC 3423-24). [402, 403, 801, 802]
- 23 A-32. Letter dated October 18, 2004 from Susan Slonecker to Jon Rosen
24 (J.Gibson-1440). [402, 403, 801, 802]
- 25 A-33. E-mail dated November 11, 2004 from Mike Dykeman to Gibson
26 (J.Gibson-673). [402, 403, 801, 802]
- 27 A-34. E-mail dated October 21, 2004 from Mike Dykeman to Gibson
(J.Gibson-675). [402, 403, 801, 802]
- A-35. E-mail dated January 30, 2004 from Manson to Canary (J.Gibson-
676). [402, 403, 801, 802]
- A-36. E-mail dated October 25, 2004 from Larry Canary to FIU (J.Gibson-
678). [402, 403, 801, 802]
- A-37. Kitsap County job announcement dated August 2004 (J.Gibson-388).
[402, 403, 801, 802]
- A-38. Letter dated October 23, 2004 from Steve Neff to Gibson (J.Gibson-
389). [402, 403, 801, 802]
- A-39. E-mail dated April 4, 2005 from Derrick Crawley to team (J.Gibson-

383). [402, 403, 801, 802]

A-40. E-mail dated December 21, 2004 from Kathy Graves re acting assignments (KC 4055). [402, 403, 801, 802]

A-41. E-mail dated September 24, 2004 from Stephanie Warden to Kathy Graves (KC 4062). [402, 403, 801, 802]

A-42. Gibson Absence Requests October to December 2004. [402, 403]

A-43. E-mails dated October 2004 between Mike Dykeman, Gibson, Stephanie Warden and Larry Canary (KC 4111-4119). [402, 403, 801, 802]

A-44. E-mail dated October 27, 2004 from Mike Dykeman to Larry Canary (KC 4127). [402, 403, 801, 802, 106]

A-45. E-mails dated May 24, 2004 between Larry Canary and Gibson (KC 4132-33). [402, 403, 801, 802, 106]

A-46. E-mail dated October 24, 2004 from Mike Dykeman to Gibson (KC 4160-61) [402, 403, 801, 802]

A-47. E-mail dated September 23, 2004 from Kathy Graves (KC 4162). [402, 403, 801, 802]

A-48. Memo dated May 11, 2004 from Larry Canary to FIU (J.Gibson-100). [402, 403, 801, 802]

A-49. Memo dated January 14, 2004 from Larry Canary to FIU (KC 2321). [402, 403, 801, 802]

A-50. Memo dated February 5, 2004 from Larry Canary to FIU (KC 2322). [402, 403, 801, 802] [106]

A-51. Memo dated May 11, 2004 from Larry Canary to FIU (KC 2325). [402, 403, 801, 802] [106]

A-52. Memo dated June 7, 2004 from Larry Canary to FIU (KC 2326). [402, 403, 801, 802] [106]

A-53. Memo dated June 16, 2004 from Larry Canary to FIU (KC 2327). [402, 403, 801, 802] [106]

A-54. Memo dated July 16, 2004 from Larry Canary to FIU (KC 2328). [402, 403, 801, 802] [106]

A-55. Memo dated September 19, 2004 from Les Eaton (KC 2330). [402, 403, 801, 802] [106]

(c) Authenticity and admissibility disputed:

Defendants' Exhibits:

A-56. King County FIU Clearance Rates from January to October 2003 (KC 4134-4152). [402, 403, 801, 802]

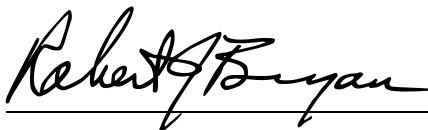
- 1 A-57. Memo dated August 22, 2003 from Jason King (KC 2708-09). [402,
2 403, 801, 802] [106]
- 3 A-58. E-mails dated July-August 2004 from a citizen to Jim Rankin
4 complaining about Gibson's handling of an investigation (KC 4032-5,
5 4039) [402, 403, 801, 802]
- 6 A-59. Records of weekly team meetings Larry Canary held with the
7 members of the fire investigative unit from October 2003 to October
8 2004, including John Gibson (KC 3803-29). [402, 403, 801, 802]
- 9 A-60. Training Summary for Jim Rankin, showing his attendance at a
10 Managing Diversity seminar. [402, 403, 801, 802]
- 11 A-61. Meeting Agenda dated October 11, 2004 (KC 4048). [402, 403, 801,
12 02]
- 13 A-62. E-mail dated October 19, 2004 from William Nankervis to Larry
14 Canary (KC 4131). [402, 403, 801, 802]
- 15 A-63. Stephanie Warden and Jason King interview notes dated September 5,
16 2003 (KC 2704-2707). [402, 403, 801, 802] [106]

ACTION BY THE COURT

- 17 (a) This case is scheduled for trial before a jury on December 12, 2005 at 9:00 a.m.
- 18 (b) Trial briefs shall be submitted to the court on or before **December 8, 2005**.
- 19 (c) Jury instructions requested by either party shall be submitted to the court on or
20 before **December 8, 2005**. Suggested questions of either party to be asked of the
21 jury by the court on voir dire shall be submitted to the court on or before
22 **December 8, 2005**.

23 This order has been approved by the parties as evidenced by the signatures of their
24 counsel. This order shall control the subsequent course of the action unless modified by a
25 subsequent order. This order shall not be amended except by order of the court pursuant to
26 agreement of the parties or to prevent manifest injustice.

27 DATED this 5th day of December, 2005.



ROBERT J. BRYAN
United States District Judge

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FORM APPROVED

s/
Attorney for Plaintiff

s/
Attorney for Defendants